KHOO CHENGENE

v.

MENTERI DALAM NEGERI, MALAYSIA & ORS.

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR J
[CRIMINAL APPLICATION NO. 44-34-91]
8 JULY 1991

CRIMINAL PROCEDURE: *Detention order - Whether authorisation bad in law - Investigation conducted by police officer who was also the arresting officer - Purpose and scheme of Act - Discretion of Minister - Investigating police officer to prepare complete report of investigation - Meaning of "to cause" a copy to be submitted - Dangerous Drugs (Special Preventive Measures Act) 1985, ss. 3 (1), (2)(a), (b), (3), 6(1), 9(1).*

The applicant had been detained under s. 6 of Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act) and sought to impugn the detention order on the following grounds:

(a) that contrary to s. 3(2)(a) of the Act the authorisation was issued by GBK who was not a disinterested person and who was also the arresting officer and

(b) that there was non-compliance with s. 3(3) of the Act in that there was no evidence that the investigating officer had personally prepared the complete report of the investigation.

Held:

[1] Given the scheme and purpose of the Act, it is clear that Parliament intended that disqualification by reason of the *nemo judex* principle should not apply in the case of a police officer of the appropriate rank exercising his powers of authorisation under s. 3(2)(a) or (b) of the Act.

[2] All that s. 3(3) requires is that the police officer making the investigation must cause a copy of the complete report of the investigation to be submitted to the Enquiry Officer and to the Minister concerned and this means that the person to whom the duty is cast must see that the specified work is done.

[3] On the affidavit evidence, the obligation imposed by s. 3(3) had been duly discharged.

[Application for habeas corpus dismissed.]

Cases referred to:
Giles v. Galinski [1904] 1 KB 622 ***(foll)***
Wilkinson v. Barking Corp. [1948] 1 KB 721 ***(cit)***

Legislation referred to:
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), (2)(a), (b), (3), 5(1), 6(1), 9(1), (2)

For the applicant - Choo Hon Choy; M/s. Ooi Lee & Co.
For the respondents - Jalaldin bin Hussain, Senior Federal Counsel

JUDGMENT

Edgar Joseph Jr J:

The applicant had been detained by virtue of a detention order dated 7 January 1991, issued pursuant to s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act) under the hand of the Deputy Minister of Home Affairs, expressed to authorise his

detention at the Pemulihan Akhlak, Pulau Jerejak, Penang, for a period of two years with effect from 7 January 1991, on the ground, broadly stated, of being involved in activities relating to the trafficking of dangerous drugs.

All references to sections in this judgment are, unless the context otherwise requires, to the Act.

Counsel for the applicant has sought to impugn the detention order on two separate grounds.

In the first place, it was submitted that there had been a breach of s. 3(2)(a).

In the second place, it was submitted that there had been a breach of s. 3(3).

To put matters in their correct perspective it is necessary to reproduce subs. (1), (2) and (3) of s. 3. They read as follows:

> 3.(1) Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under-subs. (1) of s. 6.
>
> (2) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been made in respect of him under subs. (1) of s. 6:
>
> Provided that:
>
> (a) he shall not be detained for more than twenty four hours except with the authority of a police officer of or above the rank of inspector;
>
> (b) he shall not be detained for more than forty eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police;
>
> (c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of deputy superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.
>
> (3) The police officer making an investigation pertaining to a person arrested and detained under this section shall cause a copy of the complete report of the investigation to be submitted:
>
> (a) to an Inquiry Officer appointed under subs. (1) of s. 5; and
>
> (b) to the Minister,
>
> within such period as may be prescribed by the Minister by regulations made under this Act.

As to the first ground, it was contended that the authorisation under proviso (a) to s. 3 was issued by one Inspector Guan Beng Kang who was also the arresting officer and, as such, very far from being a disinterested person. Accordingly, it was argued that the authorisation was bad in law.

It is true that freedom from bias is one of the two major limbs of the rules of natural justice and is enshrined in the maxim *nemo judex in causa sua*. I took it that what Counsel was contending for was that by reason of Inspector Guan Beng Keng's prior involvement in the applicant's case, that is to say, by his having arrested the applicant, he was thereby disqualified from issuing the authorisation under s. 3(2)(a).

To determine the point raised, regard must be had to the purpose and the scheme of preventive detention under the Act. Briefly put, the Act provides, *inter alia*, for the detention without trial in authorised places for periods of up to two years, and renewable indefinitely, upon the order or direction of the Minister, of persons associated with any activity relating to or involving the trafficking in dangerous drugs. The power to detain persons for the purposes mentioned was conferred by Parliament upon the Minister of Home Affairs which, of course, includes his deputy. He has been entrusted with vast powers. He can order the detention of a person without first giving him an opportunity of being heard. In other words, no duty of *audi alteram partem* rests on the Minister. The Minister cannot, of course, act arbitrarily or capriciously. To put it another way, in exercising his discretion to make a detention order or a restriction order or a direction extending the duration of such orders, the procedure laid down in terms of the Act must, of course, be observed as an essential condition of its exercise. There are also provisions in the Act requiring the detainee to be served with the necessary documentation to enable him to make presentations to an Advisory Board. (see s. 9(1) and (2)).

Given the scheme and purpose of the Act, I was of the opinion that Parliament intended by the Act that disqualification by reason of the *nemo judex* principle should not apply in the case of a police officer of the appropriate rank exercising his powers of authorisation under s. 3(2)(a) or (b) of the Act. So, for example, a statute may effectively prescribe that a council has to act as a Judge in its own cause; in which case, a Court will not interfere. (see *Wilkinson v. Banking Corp.* [1948] 1 KB 721). Accordingly, this ground of objection fails.

As to the second ground, it was contended that s. 3(3) requires the police officer making an investigation pertaining to the person arrested and detained to personally prepare the complete report of investigation; yet, there was no evidence before the Court of compliance with this requirement.

With respect, s. 3(3) does not so provide. All it requires is that the police officer making the investigation must "**cause** a copy of the complete report of the investigation to be submitted" to an Enquiry Officer and to the Minister concerned. (Emphasis supplied). In *Giles v. Galinski* [1904] 1 KB 622 Lord Alverstone CJ held that "a statutory obligation imposed on a person **to cause** a thing to be done" means that "the person upon whom the duty is cast must see that the specified work is done." Upon the affidavit evidence before me, I was satisfied that the obligation imposed by s. 3(3) had been duly discharged. Accordingly, this further ground of objection also fails.

In the result, the application was dismissed.

Also found at [1991] 3 CLJ 1802